THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.18630, 18990 and 19378 OF 2005

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12.04.2006

Between:

L.Hassan Khan, S/o.Late Mahaboob Khan

And others

… Petitioners

AND

The Principal Secretary to Government of Andhra Pradesh,

Revenue Department, Secretariat, Hyderabad

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.18630, 18990 and 19378 OF 2005

COMMON ORDER:

As the writ petitions and contempt case arise in the background of facts, which is similar, they are being disposed of by this common order. The fact of the matter, which is general to all the writ petitions and contempt case, may be noticed in brief.

The land in survey No.480 in Dhone Village of Dhone Mandal in Kurnool District was purchased by late Mahaboob Khan under registered sale deed dated 15.8.1919. He was enjoying the property along with his three sons Hasan Khan, Abdur Rahaman Khan and late Noor Khan. After death of Mahaboob Khan, statedly, there was a partition of the properties among the three sons under registered partition deed dated 09.7.1958. Hasan Khan got Acs.9.09, Abdur Rahman Khan got Acs.8.86 and an extent of Acs.8.00 fell to the share of Noor Khan. State acquired about Acs.1.06 belonging to Hasan Khan, Acs.1.14 belonging to Abdur Rahman Khan and Acs.2.63 belonging to Noor Khan, (total extent of Acs.4.83) for laying a bypass road for N.H.7 pursuant to a notification dated 21.9.1990 under Section 4 of Land Acquisition Act, 1894 (LA Act, for brevity). All the owners obtained necessary

pattadar passbooks and title deeds under the A.P. Rights in Land & Pattadar Passbooks Act, 1971 (the Act, for brevity). It appears, in 1978, Abdur Rahman Khan transferred the remaining land (after land acquisition) by way of registered gift deed in favour of third petitioner in June 2004. Further, Hasan Khan got the boundary dispute resolved by approaching fourth respondent, who gave field measurement book sketch to his land in survey No.480/3C.

Similarly, the land admeasuring Acs.3.50 and Acs.0.65 in survey No.479/HIC and the land admeasuring Acs.1.61 in survey No.479/HIA was allegedly purchased by Kamal Saheb and Ramgopal under registered sale deeds from Peda Pullaiah and China Pullaiah respectively. In 1977, the Government acquired about Ac.1.00 of land and paid compensation to these persons and they were in possession of the land. The land admeasuring Acs.3.00, Acs.0.74 and Acs.0.73 in survey No.479/H3 was purchased by M/s.Pinjari Bashu, G.Hanumantha Rao and N.Lakshumaiah under registered sale deed dated 27.10.1986 and sale agreement dated 14.6.1986. When the land was acquired from out the said survey number, the Government paid compensation to the vendors of these persons.

It appears, Gayatri Juice Industries, Dhone, allegedly approached local M.L.A., for allotment of land for establishing a factory. Therefore, the District Collector and Revenue Divisional Officer (RDO), Kurnool brought pressure on the Mandal Revenue Officer (MRO), (fourth respondent) for acquiring the land in survey Nos.479 and 480 admeasuring Acs.32.96, which was in possession of large number of persons. The MRO issued notice on 26.2.2005 and 09.6.2005 informing that the land in various sub-divisions of survey Nos.479 and 480 is Government land, that various persons got pattadar passbooks for the said Government land, that they have violated conditions of D-Form patta and, therefore, they were asked to attend the enquiry. The owners/ occupants submitted their objections along with the documents claiming absolute ownership. The MRO allegedly did not conduct any enquiry but served an order on 14.8.2005 to the effect that the land is resumed to the Government for provision of house sites to the eligible poor persons to be distributed on 16.8.2005. Aggrieved by the same, Hasan Khan, Abdur Rahman Khan and Saleema Begum, who are the joint owners of the property in survey No.480 filed W.P.No.18630 of 2005. M/s.Kamal Saheb and Ramgopal, alleged owners of land in survey Nos.479/HIC and 479/HIA filed W.P.No.18990 of 2005 and M/s.Pinjari Bashu, G.Hanumantha Rao and N.Lakshumaiah (alleged owners of land in survey No.479/H3) filed W.P.No.19378 of 2005.

In all these matters, this Court while admitting the writ petitions, passed orders directing the revenue officials to maintain *status quo* until further orders. A counter affidavit is filed along with application to vacate *status quo* orders in W.P.No.18630 of 2005. In the counter affidavit filed by the MRO on behalf of all the respondents, it is stated as follows. The land in survey Nos.480 is classified as Government land (Assessed Waste Dry), in the Resettlement Register of 1908 (Lands Basic Register). The writ petitioners purchased the property under registered sale deed dated 15.8.1919 from Mahaboob Bi, who had no title over the Government land. Therefore, the occupation of the land is illegal. Even if the land is acquired and compensation is paid, the same does not change the character of the land, as the petitioners did

not produce any documentary evidence in support of the title during the award enquiry. The pattadar passbooks issued to the petitioners do not confer any right, as by reason of Section 12 of the Act, the provisions of the Act have no application to the lands belonging to State and Central Government. The allegation that the land was allotted to M/s.Gayatri Juice Industries is denied. It is further stated that the land is earmarked for distribution as house sites to poor persons. The Joint Collector and the RDO, Kurnool inspected the land on 03.8.2005 and issued directions on 04.8.2005 to take possession of the land in survey No.480 and 479/H for distribution as house sites, as the land is well-suited for construction of houses and as there is demand for allotment of house sites. Notice was issued to all the petitioners and after considering the explanations, MRO passed orders and the occupants failed to produce any documentary evidence of title.

Learned Counsel for petitioners, M/s.E.Ayyapu Reddy, K.Rathanga Pani Reddy and B.S.Venkata Ramesh, submit that the impugned order is illegal and in contravention of the provisions of A.P. Land Encroachment Act, 1905 (LE Act, for brevity). Secondly, they would urge that in view of long possession, the respondents cannot resort to summary eviction proceedings under LE Act and the Government has to necessarily file a declaratory suit in the civil Court. Reliance is placed on the decision of the Supreme Court in **Govt. of A.P. v T.Krishna Rao**. Nextly, it is urged that in view of Section 15 of A.P. Land Grabbing (Prohibition) Act, 1982 (LGP Act, for brevity) giving overriding effect to its provisions the Government has to resort to the provisions of LGP Act and any such summary proceeding is not applicable under the Act. The land in question is not assigned land and, therefore, the same cannot be resumed by the MRO. The action of the MRO is mala fide.

Learned Assistant Government Pleader (AGP) for Revenue (Assignment) submits that as per the Resettlement Register, the land is Government land and, therefore, the sale deed dated 15.8.1919 executed by Mahaboob Bi does not confer any title on the petitioners nor validates the possession of the land. The factum of award under LA Act and issue of pattadar passbooks and title deeds, in the absence of proof of title, do not confer any title on the petitioners. Learned AGP strenuously contends that long ago L.Mahaboob Khan, the Village Munsif of Dhone, transformed Assessed Waste Dry land into patta land and entered in 10(1) Register without notice to the officials concerned and without making changes in Resettlement Register, due to which, the nature of the land does not change. He submits that as the land was required for distribution as house sites, the MRO issued notice and passed appropriate orders.

The background facts of these cases present a peculiar situation. Ordinarily, whenever land is required for a public purpose like distribution as house sites, land is acquired and if the land is assigned land it is resumed, in which event, again the compensation has to be paid. If the land is found to be Government land under encroachment by private persons, it is not doubt true that the Government need not acquire its own land. But the Government has option either to resort to LE Act or LGP Act or by way of filing a suit. Peculiarly, the respondents did not resort to any of these proceedings though they allege that the land as per the Resettlement Register is Assessed Waste Dry land belonging to Government. The learned Counsel for

petitioners has brought to the notice of this Court an order passed by my learned Brother Hon'ble Sri Justice E.Dharma Rao in W.P.No.17968 of 2005 dated 12.8.2005 and another order dated 28.12.2005 passed by me in W.P.No.27809 of 2005. In both the writ petitions, one L.Shahzadi Khatoon, W/o.Noor Mehmood Khan was the petitioner. In the first case, the petitioner came to the Court after receiving the notice issued by the MRO on 09.6.2005. The said writ petition was disposed of by this Court directing the MRO to consider the explanation submitted by the petitioner and pass appropriate orders in the matter. In the second writ petition, final proceedings of the MRO dated 27.9.2005 were assailed. The said writ petition was disposed of observing as under.

> The petitioner was issued notice on 09.6.2005 to attend enquiry and produce necessary proof. Presumably such enquiry was done on the premise that the petitioner has been in possession of the Government land in S.No.480. The petitioner produced necessary documents and after considering the same, the impugned order has been passed resuming the land to the Government. It is a disputed question of fact as to whether the land in S.No.480 is patta land or the Government land. In either case, the petitioner has effective alternative remedy before the third respondent by filing appeal. The learned counsel for the petitioner does not dispute this. Insofar as the procedure adopted by the fourth respondent is concerned, there can be least objection, as prior notice was issued and explanation was considered. Therefore, without expressing any opinion on the merits of the case, the petitioner is given liberty to file appeal before the third respondent within a period of ten days from the date of receipt of a copy of this order. As and when such appeal is filed, third respondent shall entertain the appeal and dispose of the same within a period of four weeks thereafter duly considering all the documents produced by the petitioner before the fourth respondent. Liberty is also given to the petitioner to produce additional evidence to prove her title to the property and disprove the Government's claim.

W.P.No.18630 of 2005 is filed against the proceedings dated 14.8.2005, which was issued by the MRO after considering the explanation of the petitioners therein. The other two writ petitions were filed after receiving the notice dated 09.6.2005, apprehending dispossession. A perusal of the proceedings dated 14.8.2005 would however reveal the said order covers all the writ petitions. Therefore, these writ petitions can also be disposed of in the above terms. Here, an important submission made by Sri E.Ayyapu Reddy, learned Counsel for the petitioners in W.P.No.18630 of 2005 needs to be considered. Learned Counsel submits that when the land is in possession of the petitioners for a long time over a period of more than nine decades, the summary proceedings under LE Act cannot be taken by revenue officials for eviction of the petitioners. It is no doubt true that originally the land in survey No.480 belonged to Mahaboob Bi, which was purchased by Mahaboob Khan under sale deed dated 15.8.1919. The land since then has been allegedly in possession of the petitioners, who obtained pattadar passbooks under the Act. In all these matters, a portion of the land was acquired for National Highway and the compensation was paid either to the petitioners or to their predecessors in title. All

these allegations, if true, are certainly the acts of possession and method of exercising the right over the land. Even when the action is initiated under LE Act, the respondents are bound to consider this aspect of the matter. Be it also noted that under Article 112 of the Limitation Act, 1963, the limitation for the Government to file a suit for declaration is 30 years. If the Government files a suit under Limitation Act, can they succeed now or whether such suit is barred by limitation. These are the primary issues, which cannot be ignored. Now that the final orders are already passed, it would not be proper for this Court to express any opinion on these questions.

In view of the above reasons, this Court is of considered opinion that the petitioners may file appeal before the RDO against the proceedings of the MRO dated 14.8.2005. As and when such appeals are filed, RDO shall consider the same and pass appropriate orders keeping inview the observations made herein above on legal questions. Till such exercise is completed, there shall be *status quo* as to possession.

The writ petitions, with the above observations and directions, are accordingly disposed of. No costs.

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(**V.V.S.RAO,J**)

April , 2006.

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